IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4723 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTIBHAI SOMABHAI MAKVANA & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BS PATEL for Applicant(s) : 1 - 2.MRS RANJAN B PATEL for Applicant(s) : 1 - 2.
Mr.H.L.Jani, APP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR JM PANCHAL for Respondent(s) : 2,
MR KJ PANCHAL for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/03/2006

CAV JUDGMENT

1. Since the complaint is of the year 1996, the

matter is heard finally.

2. The petitioners have filed this petition under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the complaint at Annexure “A” bearing Inquiry Case no.0/209/96 pending in the Court of learned Chief Judicial Magistrate, Vadodara, alongwith the order dated 4-9-1996 passed by the learned Chief Judicial Magistrate below the complaint.

3. The respondent no.2 herein initially lodged a complaint before the Fatehganj Police Station and offence was registered under the provisions of Section 498-A, 506(2) and 114 of the Indian Penal Code read with Sections 3 and 7 of the Dowry Prohibition Act vide C.R no.1/48/96 produced at Annexure “B” to the petition. The police carried out investigation and chargesheet was also submitted before the learned Chief Judicial Magistrate. However, the respondent no.2 not

being satisfied with the investigation alleged that the police in collusion with petitioners accused has filed chargesheet under the said Sections, whereas in view of the allegations in the complaint, chargesheet for the offence of murder under Section 302 of the Indian Penal Code ought to have been filed against the petitioners-accused. He, therefore, filed a second complaint in Inquiry Case no.0/209/96 against the petitioners-accused for the alleged offence punishable under Sections 302, 201, 506(2) read with Section 114 of the Indian Penal Code (for short “IPC”) before the learned Chief Judicial Magistrate. and the learned Chief Judicial Magistrate passed an order below complaint on 4-9-1996 forwarding the complaint to the CBI/DCB for its report to be submitted within thirty days. Hence this Misc. Criminal Application seeking the relief as stated in para-1 of this judgment.

4. The respondent no.2 in the complaint under challenge has alleged that his daughter Nayana was married to the petitioner no.1. That after the birth of a son disputes and differences cropped up as a result of which deceased Nayana was compelled to stay with her parents for about three years since the respondent no.1 and in-laws were demanding dowry and causing mental and physical torture and harassment. It is also the case of the respondent no.2 that a maintenance application was moved against the petitioner no.1-accused and when this Court passed order of maintenance of Rs.750/-per month, the respondent no.1 entered into a compromise in Court and by order dated 5-1-1996, the Court handed over his daughter Nayana to the respondent no.1. Thereafter, before 10 days of the incident, Nayana visited her parents and complained that the respondent no.1 was still causing mental and

physical torture and harassment to her. It is further alleged by the respondent no.1 that he heard the news of his daughter having received burns on 31-5-1996 and he alongwith his son and others rushed to the hospital and they had to return back because of threats given by the respondent no.2. Thereafter , on 1-6-1996, he learnt that his daughter Nayana had died during treatment at the hospital.

5. It is the case of the petitioners that although there were disputes and difference in the married life of the petitioner no.1 and deceased Nayana, the same was settled by way of compromise and that even the maintenance application was filed under pressure from the respondent no.2. According to the petitioners, deceased Nayana had suffered burns while cooking, she was removed to the hospital, treated by the doctor and it was a clear case of accidental

burns. It is also the case of the petitioners that the dying declaration is recorded by police and the doctor has also noted down the history, and therefore, a false complaint had been lodged based on the evidence collected by the police in pursuance to the complaint at Annexure “B” after the chargesheet has been filed by the police.

6. Learned Counsel Mr. B.S.Patel for the petitioners has vehemently argued that in the private complaint at Annexure “A” filed by the respondent no.2, there is a mention with regard to the first complaint Annexure “B” filed at Fateganj Police Station and that the police has already filed chargehseet. In spite of that, ignoring the averments made in the complaint, the learned Chief Judicial Magistrate has erroneously passed the order below second complaint at Annexure “A”. According to the learned Counsel, there is a specific bar against lodging of second

complaint, and therefore, the complaint is not sustainable in the eye of law.

7. On the other hand, learned Counsel for the respondent no.2 submitted that when prima facie the allegations in the complaint is that of murder having been committed by the petitioner no.1-accused there is no reason for the police to file chargesheet for the offences punishable under Section 498A, 506(2) and 114 of IPC. According to the learned Counsel, it is under these circumstances that the complaint at Annexure ”A” before the learned Chief Judicial Magistrate was filed for securing justice and fair investigation.

8. The learned A.P.P. for the respondent no.1-State while supporting the order of the learned Chief Judicial Magistrate has submitted that a second complaint is maintainable and it is open for the learned Magistrate to order inquiry by

police if he thinks it proper.

9. I have carefully considered the submissions canvassed at the Bar by the learned Counsel for the respective parties.

9.1 It may be noted that when a private complaint is lodged before the learned Judicial Magistrate, the Magistrate can proceed with the complaint under Section 190 of Criminal Procedure Code. In the instant case, when the private complaint at Annexure “A” was lodged, the facts with regard to the police complaint having been filed in connection with the same incident was well within the knowledge of Magistrate. What is required of the Magistrate in that event was to order inquiry under Section 202 of the Criminal Procedure Code rather than police investigation under Section 156(3) of the Cr.P.C. since the offence alleged was under Section 302 of the IPC which is triable exclusively by the Court of Sessions. In fact, the Magistrate could have very well

examined the complainant and the witnesses on oath, and thereafter, proceeded to pass an appropriate order. This is so, in view of the fact that the Magistrate had the opportunity of verifying the first complaint at Annexure “B” filed before the police.

10. Viewed in the said background, I deem it just and proper to remit the matter to the learned Chief Judicial Magistrate, Vadodara. I also do not express any opinion whatsoever with regard to the allegations levelled by the respondent no.2-complainant in the complaint as this order is being passed without entering into the merits of the matter.

11. Thus, having regard to the facts and circumstances and nature of allegations made in the complaint, I do not think it appropriate for this Court to quash the complaint. In that view of the matter, the application is partly allowed.

The order dated 4-9-1996 passed by the learned Chief Judicial Magistrate, Vadodara, below the complaint at Annexure “A” is hereby quashed and set aside. The matter is remitted to the learned Chief Judicial Magistrate, Vadodara, with a direction to hold inquiry under Section 202 of the Criminal Procedure Code and to forward the complaint to the DCB for its report to be furnished within 30 days from the receipt thereof.

12. Rule is made absolute to the extent indicated hereinabove.

(M.D.Shah,J.)

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